SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No.————

BLANCHE STANFIELD,
Executrix of the Last Will and Testament of
Lloyd B. Stanfield, Deceased,
Petitioner,

vs.

THE PAUL REVERE LIFE INSURANCE COMPANY,
Worcester, Massachusetts, a Corporation,
Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

A. The question in this case.

B. The conflict between the decision of this Court in *United Mutual Acc. Assn.* vs. *Barry,* supra, and the decision of the Circuit Court of Appeals herein.

C. The conflict in the decisions from the Circuit Court of Appeals, Seventh Circuit, and the decision of the Circuit Court of Appeals herein.

D. The failure of the Circuit Court of Appeals to follow local law as manifested by the decisions from the Supreme Court of Oklahoma.

E. The failure of the Circuit Court of Appeals to follow the great weight of authority.

ARGUMENT

A

The question in this case.

Under the policy provisions quoted under Point 1 (R. 8) and the stipulated facts with reference to evidences of injury there set out (R. 17, 11-12), which for the sake of brevity are not repeated here, was the death of petitioner's testate "evidenced by a visible contusion or wound on the exterior of the body of deceased."

B

The Conflict between the decision of this Court in United Mutual Acc. Assn. vs. Barry, 33 L. Ed. 65, and the decision of the Circuit Court of Appeals herein.

In the Barry case this Court considered a policy which provided that coverage should not extend "to any bodily injury of which there shall be no external and visible sign". Petitioner recognizes some difference in the verbiage here and in that case but submits that the purpose of such provisions in policies of this kind—to prevent fraud and mistake (*Fidelity Mut. Life Ins. Co.* vs. *Powell*, 74 Fed. 2d 525, Fourth Circuit; *Order of United Commercial Travelers* vs. *Sevier*, 121 Fed. 2d 651, Eighth Circuit) makes them comparable, and their meaning the same. In the Barry case this Court approved this instruction:

> "Visible signs of injury within the meaning of this certificate, are not to be confined to broken limbs

> or bruises on the surface of the body. There may be other external indications or evidence which are visible signs of internal injury. Complaint of pain is not a visible sign because pain you cannot see. Complaint of internal soreness is not such a sign, for that you cannot see; but if the internal injury produces, for example, a pale and sickly look in the face, if it causes vomiting or retching, or bloody or unnatural discharges from the bowels, if, in short, it sends forth to the observation of the eye, in the struggle of nature, any signs of the injury, then those are external and visible signs, provided they are the direct results of the injury."

Petitioner respectfully submits that the decision of the Circuit Court herein is in conflict with this holding by this Court. As is pointed out under D hereof, the requirement of "a visible contusion or wound on the exterior of the body", when construed in connection with the other provisions of the rider, can in no real sense be held to exclude from the coverage of this policy death from internal injuries where such injuries were evidenced as in this case. The language of the Circuit Court of Appeals, Seventh Circuit, in *Warbende* vs. *Prudential Insurance Company*, supra, is particularly appropriate:

> "It is true that 'contusion,' etymologically considered, suggests an injury which is the result of the impact of a blow upon the exterior of the body. But for the purpose of our present inquiry the meaning cannot be so restricted. It is obvious that the purpose of requiring that there be a 'visible contusion or wound on the exterior of the body' is to have visible, physical evidence of the operation of the 'external, violent and accidental means,' which

are alleged to have affected the bodily injuries. In our opinion 'visible contusion,' as used in the policy, includes any morbid change in, or injury to, either the subcutaneous tissue, or the skin, which produces markings of discolorations, that are visible upon the exterior of the body. It is not material whether the 'visible contusion' results directly from the operation of the 'means' upon the exterior of the body, or indirectly from internal injuries which are affected by the action of the 'means.' 'The accidental operation of external means may be wholly internal,' and yet the internal injuries may extend to the subcutaneous tissue or into the layers of the skin. The visibility of the 'contusion' may be due to the discoloration either of the injured tissue under the skin, or of the injured skin itself, or of both."

C

The conflict in the decisions from the Circuit Court of Appeals, Seventh Circuit, and the decision of the Circuit Court of Appeals herein.

The decision herein is in conflict with the following cases from the Circuit Court of Appeals, Seventh Circuit: *Wiecking* vs. *Phoenix Mutual Life Ins. Co.*, 116 Fed. 2d 90; *Mutual Life Ins. Co.*, vs. *Schenkat*, 62 Fed. 2d 236 (called to the attention of the Circuit Court of Appeals); and *Warbende* vs. *Prudential Insurance Company*, 97 Fed. 2d 749, 117 A. L. R. 760. It is also in conflict with *Huss* vs. *Prudential Ins. Co. of America*, 37 Supp. 364 (D. C. Pa.). The Circuit Court of Appeals, Seventh Circuit, recognized this conflict in its opinion herein wherein it said:

"A number of courts have considered similar

provisos where the facts were substantially the same, and as in many such cases, have reached different conclusions. In *Wiecking v. Phoenix Mutual Life Ins. Co.*, 7 Cir., 116 F. 2d 90; *Huss* v. *Prudential Ins. Co., of America*, 37 F. Supp. 364; *American Nat. Ins. Co.* v. *Fox* (Tex.), 184 S. W. 2d 937, and *Warbende* v. *Prudential Ins. Co. of America*, 7 Circ. 97 F. 2d 749, the courts held that substantially the same facts met the requirements of similar provisos in the policies, while in *Paist* v. *Aetna Life Ins. Co.*, 54 F. 2d 393, affirmed Third Circuit, 60 F. 2d 476; *Pope* v. *Lincoln Natl. Life Ins. Co.*, 8 Cir., 103 F. 2d 265; *Dupee* v. *Travelers Ins. Co.* (N. Y.), 16 N. E. 2d 391, and *Travelers Ins. Co.* v. *Ansley* (Tenn.), 124 S. W. 2d 37, the courts held similar facts insufficient to meet the requirements in similar provisos."

The policy provisions in these cases were the same.

The Wiecking case from the Seventh Circuit was a sunstroke case. The Schenkat and Warbende cases poison cases. The Huss and Fox cases were sunstroke cases. The evidences of injury in those cases were much the same as here. In none of them did the deceased receive a blow, nor was he struck by any object nor was his skin torn or bruised. The same situation prevails here. There was evidence of injury sufficient to meet the requirements of the policies in the opinions of the Circuit Court of Appeals, Seventh Circuit, in three cases; Circuit Judge Clark writing the opinion in the Huss case; the Texas Civil Court of Appeals and the District Judge who tried this case. In each of these cases, and many others from other jurisdictions, the Courts in effect held that in order to sustain liability it was not neces-

sary to show that deceased had been struck by or had struck some object or that he had a bruise on his body received by coming into contact with some physical object or that his skin was torn by some impact. The Circuit Court of Appeals, Third Circuit, in the Paist case, and the New York court in the Dupee case, took the opposite view. We do not regard the Pope case from the Eighth Circuit as any authority for the reason there were no evidences of injury of any kind in that case; nor the Ansley case from Tennessee for the reason the Court there indicated that if the facts in that case had been as the facts in the Schenkat case from the Seventh Circuit a different result would have been reached. So, for the purposes of this brief, we have the conflict between the Seventh Circuit cases and the Pennsylvania District Court on the one hand and the Third Circuit and the Tenth Circuit on the other.

In none of the Federal Court decisions cited was the decision as respects the construction of the clause "visible contusion or wound on the exterior of the body" bottomed on local law. We therefore have an irreconcilable conflict between decisions from three Circuit Courts of Appeals which should be reconciled by this Court. In this connection petitioner believes it pertinent to point out that the policy provision under consideration appears in many accident policies now issued. It seems to be a standard provision with old line companies. This makes important the conflict between the Circuit Courts of Appeals and the reconciliation of this conflict by this Court.

D

The failure of the Circuit Court of Appeals to follow local law as manifested by the decisions from the Supreme Court of Oklahoma.

The Supreme Court of Oklahoma has not directly passed on the question here. But in five cases, *Continental Casualty Co.* vs. *Clark,* 70 Okla. 187, 173 Pac. 453, *Maryland Casualty Co.* vs. *Hazen,* 182 Okla. 623, 79 Pac. 2d 577, *Provident Life and Accident Ins. Co.* vs. *Green,* 172 Okla. 591, 46 Pac. 2d 372, *Provident Life and Accident Co.* vs. *Henson,* 187 Okla. 150, 101 Pac. 2d 838, *Woodmen of the World* vs. *Chapman,* 189 Okla. 69, 113 Pac. 2d 600, that Court held sunstroke to be death by an accident effected solely through external, violent and accidental means within the meaning of the double indemnity rider sued on. The Circuit Court of Appeals, Tenth Circuit, recognized the rule in *Suggs* vs. *Mutual Ben. Health and Acc. Assn.,* 115 Fed. 2d 80, and in this case. There are other analogous cases from the Supreme Court of Oklahoma called to the attention of the Circuit Court of Appeals, which afford a reasonably satisfactory basis for conclusion by that and this Court respecting State law. *Ruhlin* vs. *New York Life Ins. Co.,* 82 L.Ed. 1290; *West* vs. *American T. and T. Co.,* 85 L. Ed. 139; *Huss* vs. *Prudential Ins. Co.,* supra; *Jackman* vs. *Equitable Life Ins. Soc.,* 145 Fed. 2d 945. The Oklahoma cases referred to are: *Central State Life Ins. Co.* vs. *Jordan,* 184 Okla. 239, 86 Pac. 2d 640; *National Life Ins. Co.* vs. *May,* 170 Okla. 198, 39

Pac. 2d 108; *Barnett* vs. *Merchants' Life Ins. Co.*, 87 Okla. 42, 208 Pac. 271; *Lincoln Health and Accident Insurance Company* vs. *Buckner*, 117 Okla. 35, 245 Pac. 582; *Lincoln Health and Accident Ins. Co.* vs. *Johnigan*, 114 Okla. 223, 245 Pac. 837; *Southern Surety Co.* vs. *MacMillan*, 58 Fed. 2d 541, Tenth Circuit; *B. & H. Passmore Metal and Roofing Co., Inc.* vs. *New Amsterdam Casualty So.*, 147 Fed. 2d 536, Tenth Circuit.

See dissenting opinion herein (R. 28-9).

In this case death resulted from internal injuries which were evidenced on the exterior of the body. But the Circuit Court of Appeals concluded that such were not the kind of evidences of injury which the policy here requires. That Court construes the words "wound" and "contusion" to require breaking of the skin or a bruise from a blow received upon the body without the breaking of the skin. In either event, the injury would have to be received by violent contact of the body with some object or instrument or through breaking of the skin. Such an injury would of necessity be visible and be on the exterior of the body. This being true, petitioner feels it is inconsistent to say that the parties intended the words "wound" and "contusion" in this policy to mean a blow or injury received by violence or by breaking of the skin, and at the same time to require that such blow or injury be visible and be on the exterior of the body. Petitioner feels that the requirement that the wound or contusion be visible on the exterior of the body contra-

dicts the holding of the Circuit Court of Appeals that such wound or contusion must have been received by violence or breaking of the skin.

If the Circuit Court of Appeals' construction of the words "wound" and "contusion" is correct, then the words "visible" and "on the exterior of the body" are surplusage, and the policy ambiguous and uncertain. Inasmuch as this policy was written by the insurance company petitioner does not believe that it should be relieved of liability herein because it thusly worded the clause or phrase under which it seeks to escape liability.

Petitioner further submits that if the construction of the policy by the Circuit Court of Appeals is correct then the double indemnity rider sued on herein being ambiguous and uncertain, the rule of liberal construction which prevails in Oklahoma should be applied here and any doubt with respect to the intention of the parties in the making of the contract should be resolved in petitioner's favor.

The double indemnity rider insures against accidental death caused as therein set out where evidenced by a visible contusion or wound on the exterior of the body, except in case of drowning or internal injuries revealed by an autopsy. The requirement of a visible contusion or wound on the exterior of the body complements the requirement of an autopsy in the event of death from internal injuries which are not so evidenced. It is thus clear that protection is afforded in the event of death from internal injuries where

caused by a covered accident. Such being the case can it be said with reason that the parties intended the policy to cover death from internal injuries revealed by an autopsy but exclude such coverage where death is revealed to have been caused by internal injuries without an autopsy?

The purpose of the requirement that a contusion or wound be visible on the exterior of the body is not to restrict the coverage of the policy; not to provide coverage in the event of death from internal injuries revealed by an autopsy, but deny it in the event of death from internal injuries revealed without an autopsy; but to guard against fraud or mistake; to require an autopsy where the evidences of injury are not visible on the exterior of the body as here, but not to exclude from the coverage of the policy death from internal injuries evidenced by a visible contusion or wound on the exterior of the body, caused by such internal injuries, where the other provisions of the policy have been met.

In this case we have the following evidences of a visible contusion or wound on the exterior of the body of the deceased:

> "Cyanotic condition of lips at first and body at time of death; dilated pupils of eyes; visible appearance of shock; extreme pallor in face covered by profuse perspiration which continued until death, (R. 17); the pupils of his eyes were enlarged and they were starry and glassy; his face was pale yellow; his lips blue and swollen; his skin turned blue all over; his arms would draw up; his eyes looked like they were sticking out of his head, (R. 11-12)."

There were other evidences of the struggle of nature such as:

> "Vomiting; some blood streaks in material vomited; gasping for breath; fluid coming out of his nose; smother spells; retching; cold and clammy hands and he would clench his fists."

In the Fox case from Texas the Court makes the following interesting observations:

> "Technically speaking, a contusion is a bruise or damage which does not break the skin, and a wound involves a breaking of the skin. It is obvious that the policy could not reasonably insure against heat stroke, and at the same time require that the heat stroke be evidenced by a bruise of the kind made by a blow, or by an open wound, when those are not the usual evidences of a heat stroke. The kind of 'contusion' or 'wound' which the body must show in a heat stroke case naturally must be the kind of external evidence that would be produced by a heat stroke."

Petitioner submits that this is a logical and reasonable construction of the policy provision in question here. If this policy insures against death caused by sunstroke, and the Circuit Court of Appeals here held that it does, then the policy cannot reasonably require that such death be evidenced by injuries which a sunstroke could not produce. In this case death was evidenced by the kind of injuries which a sunstroke causes.

In the light of these observations and the cases from the Supreme Court of Oklahoma cited, the rules therein laid down and adhered to and the sustained position of that

Court in the construction of life insurance contracts, petitioner urges that it is manifest that the Supreme Court of Oklahoma would affirm the judgment in her favor.

This position being sustained, the decision of the Circuit Court of Appeals herein is probably in conflict with applicable local decisions. It is probably untenable and therefore in conflict with the State law as yet unannounced by the Supreme Court of Oklahoma. *Ruhlin* vs. *New York Life Ins. Co.*, 82 L. Ed. 1290. For these reasons it is respectfully submitted that the Circuit Court of Appeals erred wherein it held that there was an absence of any guidance from the Supreme Court of Oklahoma as to what it would hold in a case like this and with respect to the question here presented. Because of this error petitioner asks this Honorable Court to review the decision of the Circuit Court of Appeals.

E

The failure of the Circuit Court of Appeals to follow the great weight of authority.

Petitioner submits that the great weight of respectable authorities supports her position in this case and would affirm the judgment in her favor. She respectfully invites this Court's attention to the following cases:

United Mutual Acc. Assn. vs. *Barry*, supra;
Wiecking vs. *Phoenix Mutual Life Ins. Co.*, supra;
Mutual Life Ins. Co. vs. *Schenkat*, supra;

Warbende vs. *Prudential Insurance Company*, supra;

Huss vs. *Prudential Life Ins. Co. of America*, supra;

Anderzejewski vs. *Prudential Ins. Co.*, 184 Atl. 51;

Robinson vs. *First National Life Ins. Co.*, 10 So. 2d 249;

Simpson vs. *Travelers Ins Co.*, 121 Fed. 2d 683 (2d Cir.);

Order of Commercial Travelers of America vs. *Sevier*, 121 Fed. 2d 651 (8th Cir.);

Thompson vs. *Loyal Protective Assn.*, 132 N. W. 556 (Mich.);

Horsfall vs. *Pacific Mut. Life Ins. Co.*, 72 Pac. 1028 (Wash.);

Feis vs. *U. S. Ins. Co.*, 201 N. W. 558 (Neb.);

Hill vs. *Great Northern Life Ins Co.*, 57 Pac. 2d 405 (Wash.);

Gasperino vs. *Prudential Ins Co.* 107 S. W. 2d 819 (Mo.);

American National Ins. Co. vs. *Fox*, supra.

If petitioner's position under D be not sustained she earnestly insists that the Circuit Court erred in not following these cases and affirming her judgment. *Stinson* vs. *Edgemoor Iron Works*, 53 Fed. Supp. 864; *Hornstein* vs. *Kramer Bros. Freight Lines*, 133 Fed. 2d 143.

CONCLUSION

In conclusion petitioner respectfully submits that this Court should review the decision of the Circuit Court of Appeals, Tenth Circuit, herein for the following reasons:

1. Said decision is in conflict with an applicable decision of this Court;
2. Said decision is in conflict with decisions of the Circuit Court of Appeals, Seventh Circuit, on the same matter;
3. Said decision decides an important question of local law probably in conflict with applicable local decisions;
4. Said decision is probably untenable and therefore in conflict with the State law as yet unannounced by the Supreme Court of Oklahoma.

By reviewing this case this Court can reconcile the conflict between the decision of the Circuit Court of Appeals herein and the decision of this Court in the *Barry* case and the decision of the Circuit Court of Appeals in the *Wiecking*, *Schenkat* and *Warbende* cases, and the decision of the Pennsylvania District Court in the *Huss* case. Petitioner says she feels this should be done not only because she is probably entitled to have it done but also because there are outstanding many policies containing similar provisions and those policy holders are probably interested in having this Court settle the law which will apply to their policies in the absence of local law or manifestation thereof by the highest local court. Further, this Court can determine petitioner's claim that the Circuit Court of Appeals herein did not fol-

low local law as manifested by local decisions probably applicable and her further claim that the decision herein is probably untenable and therefore in conflict with the State law as yet unannounced by the highest local court; and petitioner's claim that the great weight of respectable authority supports her position herein and that the Circuit Court of Appeals erred in not following such authority, if there be no manifestation of local law.

Respectfully submitted,

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